

DIVISION OF HIV/AIDS SERVICES

Acquired Immunodeficiency Syndrome

Proposed New Rules: N.J.A.C. 8:61

Authorized By: Clifton R. Lacy, M.D., Commissioner, Department of Health and Senior Services

Authority: N.J.S.A. 26:1A-15, 26:5C-8 and 26:5C-20

Calendar Reference: At the end of the Summary below, please see statement of exception to rulemaking calendar requirements.

Proposal Number: PRN 2003-466

Submit written comments by January 30, 2004 to:

Laurence E. Ganges, M.S.W., Assistant Commissioner
Division of HIV/AIDS Services
New Jersey Department of Health and Senior Services
PO Box 363
Trenton, New Jersey 08625-0363

The agency proposal follows:

Summary

In accordance with Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 8:61 expired on October 4, 2001 and these proposed new rules are similar to the expired rules. The New Jersey Department of Health and Senior Services, (hereafter, the "Department") in cooperation with the New Jersey Department of Human Services and the New Jersey Department of Education, has reviewed and updated this chapter for the purposes for which it was originally promulgated.

As of June 30, 2002, over 43,600 New Jerseyans are estimated to be living with HIV/AIDS. New Jersey has the fifth highest prevalence of AIDS cases in the nation, ranks third in pediatric AIDS cases, and has the highest proportion of women among the cumulative AIDS cases in the country. Although the rate of increase in diagnosed AIDS cases has slowed, the number of people living with HIV infection continues to increase.

Briefly summarized, the Department's proposed new rules are as follows:

I. N.J.A.C. 8:61-1 HIV Services

N.J.A.C. 8:61-1.1 sets forth new definitions, which are designed to provide updated terms and clarity throughout the subchapters. Those new terms include "adult," "AIDS," "AIDS Drug Distribution Program," "Department," "full-time caregiver," "need-to-know basis," "HIV," "physician," and "student." The definition of AIDS has been revised in accordance with the Centers for Disease Control and Prevention classification system to emphasize the clinical importance of the blood cell count in the categorization of HIV-related clinical conditions. This classification system, "1993 Revised Classifications System for HIV Infection and Expanded Surveillance Case Definition for AIDS Among Adolescents and Adults," incorporated by reference, as amended and supplemented, is primarily intended for use in public health practice.

II. N.J.A.C. 8:61-2

N.J.A.C. 8:61-2.1 sets forth the standards for attendance and participation at schools and day care centers by individuals with human immunodeficiency virus (HIV), the virus that causes Acquired Immunodeficiency Syndrome (AIDS). N.J.A.C. 8:61-2.1(a) specifies that no student shall be excluded from attending school for the reason of the HIV infection. N.J.A.C. 8:61-2.1(b) stipulates that no student with HIV shall be restricted from their employment due to the HIV infection, unless they have another illness which would restrict that employment. N.J.A.C. 8:61-2.1(c) states that no student shall be excluded from school services such as transportation, extra-curricular activities, and athletic activities or be assigned to home instruction due to HIV infection, living with HIV or being related to someone with HIV infection in accordance with N.J.A.C. 6A:16-1.4. N.J.A.C. 8:61-2.1(d) requires that any person with uncovered weeping skin lesions shall be removed from the school setting. N.J.A.C. 8:61-2.1(e) requires any public, non-public school or day care facility to adopt written policies and procedures for handling blood and body fluids and make available training supplies to all school personnel in accordance with N.J.A.C. 6A:16-1.3 and 2.3(e). N.J.A.C. 8:61-2.1(f) requires any public, non-public school or day care facility to adopt written policies and procedures for post-exposure evaluation and follow up for an employee exposed to blood or body fluids. This provision requires district boards of education to develop policies and procedures on post-exposure management in accordance with Federal and State standards. Finally, N.J.A.C. 8:61-2.1(g) precludes any employee of a district board of education or public school from sharing information that identifies a student as having HIV or AIDS, unless informed consent is obtained from the student in accordance with N.J.S.A. 26:5C et seq.

III. N.J.A.C. 8:61-3

N.J.A.C. 8:61-3.1 states the purpose and scope of the AIDS Drug Distribution Program. This section specifies that individuals must meet the clinical and financial criteria in order to become enrolled in the AIDS Drug Distribution Program.

N.J.A.C. 8:61-3.2 requires that the medications designated for coverage will be determined by the Division of HIV/AIDS Services using cost, efficacy and frequency of use.

N.J.A.C. 8:61-3.3 sets forth the clinical eligibility criteria for an individual to participate in the AIDS Drug Distribution Program. This section stipulates that an individual must meet the clinical criteria established by the manufacturer of the drug, as determined by a physician.

N.J.A.C. 8:61-3.4 sets forth the income eligibility for individuals with no other source of payment to participate in the AIDS Drug Distribution Program and as a result, receive the necessary medications. N.J.A.C. 8:61-3.4(a) requires that in order to be eligible for the AIDS Drug Distribution Program, an individual shall be a permanent resident of New Jersey. This subsection states that an individual must have an annual income that does not exceed 500 percent of the Federal Poverty Level in accordance with the provisions of 42 U.S.C. § 9902(2) as amended and supplemented. N.J.A.C. 8:61-3.4(a)1 states that an applicant and spouse shall be considered separated when each maintains a separate residence and the applicant does not have access to or receive support from the spouse's income. N.J.A.C. 8:61-3.4(a)2 requires that an applicant and spouse shall be considered separated when the spouse has been institutionalized in an assisted living facility, long-term care facility (either skilled or intermediate) or in a state or county psychiatric hospital at least 30 consecutive days prior to application. Finally, N.J.A.C. 8:61-3.4(b) specifies that income shall be determined in accordance with the standards delineated at N.J.A.C. 8:83-6.2

N.J.A.C. 8:61-3.5 requires that residence shall be determined in accordance with N.J.A.C. 8:83-6.4.

N.J.A.C. 8:61-3.6 governs third party coverage for mediations. This section specifies that individuals who are eligible to receive the covered medications from entitlement programs or third party payors are not eligible to receive benefits under this program.

N.J.A.C. 8:61-3.7 sets forth the application process for the AIDS Drug Distribution Program. N.J.A.C. 8:61-3.7(a) states that applications to enroll in the program can be obtained by calling 1-877-613-4533, a toll free phone number. Subsection (b) specifies that once an individual receives the application, the form should be completed and returned to the address as indicated on the application.

Finally, N.J.A.C. 8:61-3.7(c) requires the Department or its designee to notify the individual, his or her physician, and the pharmacy from which the prescription will be filled if approved for participation in the Program.

IV. N.J.A.C. 8:61-4

N.J.A.C. 8:61-4.1 sets forth the requirements for HIV counseling and testing of all pregnant women. N.J.A.C. 8:61-4.1(a) requires that a physician, or other licensed health care provider to offer counseling and testing for HIV to a pregnant woman, or a woman who has given birth within four weeks, unless it is known by the physician that the woman has already been given the required information and has been tested during pregnancy. This provision permits a physician to delegate these duties to a registered professional nurse, a licensed health care professional, or a trained HIV counselor. Subsection (b) requires that a physician shall ask a woman to sign a form, prepared by the Department, acknowledging that she has received the information and indicated her preference on testing for HIV infection. N.J.A.C. 8:61-4.1(c)1 through 4 specifies that a physician may use a different form from the Department's, provided that the woman's signature is obtained and at a minimum the form contains the following: information on how HIV is transmitted; the benefits of voluntary testing for HIV; the availability of treatment and the right to refuse testing without the fear of not receiving prenatal care. Finally, the form shall indicate if the woman has agreed to be tested for HIV infection.

N.J.A.C. 8:61-4.1(d) requires that a physician shall make every reasonable effort to provide a woman with the test results for HIV infection. This provision stipulates that a woman who tests negative shall be advised about measures to prevent acquiring HIV. N.J.A.C. 8:61-4.1(d)1 through 5 specifies that, at a minimum, a woman who tests positive or indeterminate shall be advised about: further testing, methods to prevent transmission of HIV, the necessity of medical care and recommended treatment to diminish the risk of mother-to-infant transmission of HIV and social and other needed services.

N.J.A.C. 8:61-4.1(e) requires that a physician who cannot follow through with counseling or provide further care of a woman with a positive or indeterminate test shall initiate a referral to another physician who will provide the necessary counseling and care for the woman.

N.J.A.C. 8:61-4.1(f) requires that a woman's information and test results shall be kept confidential in accordance with N.J.S.A. 26:5C-5 et seq. This subsection specifies that a physician may reveal the woman's test results to the physician caring for her infant in accordance with N.J.S.A. 26:5C-5 et seq.

V. N.J.A.C. 8:61-5

N.J.A.C. 8:61-5.1 governs the disclosure of information to full-time caregivers. N.J.A.C. 8:61-5.1 requires that the contents of a child's HIV/AIDS record may be disclosed by health care providers to the Division of Youth and Family Services (DYFS). This section specifies that the DYFS may disclose such information on a need-to-know basis for the care and treatment of a child to full-time caregivers, private adoption agencies and foster care agencies. Information that is received by these individuals shall be kept confidential in accordance with the provisions set forth in N.J.S.A. 26:5C-10.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excerpted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

N.J.A.C. 8:61-1

The proposed new rules at this time maintain a commitment by the Department to be responsive to a changing health care environment. These proposed new rules reflect the current practice that will allow individuals to be counseled and tested without fear of HIV disclosure and discrimination.

N.J.A.C. 8:61-2

There is widespread fear of AIDS and of infection by HIV, the virus that causes AIDS. This fear often leads to actions that cause harm to individuals. The basis for this fear is not supported by medical and public health knowledge. In the past, there have been attempts to exclude HIV-infected children and adults from a school setting, including attempts at exclusion of members of a household where an HIV-infected person lives. These exclusionary attempts have resulted in serious and documented harm to some of the involved individuals. There is no evidence that HIV is transmitted in the school setting, and even exceptional situations where transmission was thought theoretically possible in the past are not today considered to pose any significant risk of HIV transmission.

Despite scientific evidence to the contrary, some people will continue to fear any contact with HIV-infected individuals. Since these rules prohibit any actions to prevent such contact in a school setting, these rules might add to the fear of such persons. However, there are many HIV-infected persons now in a school setting, and the fear appears to be lessening. These rules will not increase the danger of HIV transmission, and will serve the beneficial purpose of preventing unwarranted discrimination and harm to HIV-infected students and HIV-infected adults employed in schools.

These rules will also offer greater protection to HIV-infected students and adults by emphasizing the confidentiality procedures that must be observed

under New Jersey law on information related to AIDS and HIV infection. Students living with HIV will also benefit because the rules provide a mechanism for sharing necessary information to enhance a students educational experience.

N.J.A.C. 8:61-3

These rules will have a positive social impact by assuring that the AIDS Drug Distribution Program will be able to continue to provide medications to clients who otherwise could not afford to pay for their HIV/AIDS medications. This is important since interruption of treatment regimens will have a negative impact on the client's health and could lead to the development of resistant strains of HIV.

N.J.A.C. 8:61-4

The social impact of this rule is considered to be beneficial since knowledge of one's HIV status is considered to be advantageous to all individuals. Additionally, the use of ZDV has been shown to decrease HIV transmission from mother to infant. However, if information regarding HIV infection or AIDS were to be misused, it could result in discrimination against an individual. The disclosure of information through this proposed new rule is intentionally limited to specific circumstances and parties for the health, welfare and protection of women who are infected with HIV and to prevent the transmission of HIV from a mother to her infant. The Department continues to be keenly aware of the need for the strictest confidentiality of this information and will continue to take the necessary steps to ensure confidentiality and minimize the possibility of inadvertent disclosure.

N.J.A.C. 8:61-5

The social impact of the proposed new rule will be beneficial because all children under DYFS supervision with HIV infection who are in out-of-home placement with a full-time caregiver will be able to receive the necessary and often life-prolonging care and treatment for HIV-related disease. These full-time caregivers will be able to apply safeguards to protect against the spread of HIV, thereby contributing to overall disease prevention and control. No adverse effect is anticipated from this new rule. The individuals and agencies allowed to receive information about a child's HIV status are involved in the provision of care to that child and are prohibited from further disclosing the information except as otherwise specified in the proposed new rules.

Economic Impact

N.J.A.C. 8:61-1

As should be expected and consistent with legislative mandate, it is the intent of these new rules to have no adverse economic impact on the State. The intent of N.J.A.C. 8:61-1 is to establish standard definitions to protect the general health, safety and welfare clients who receive healthcare services.

N.J.A.C. 8:61-2

Refusal to admit an HIV-infected child to school would result in increased costs to the school district to provide home instruction. Thus, the costs of educating an HIV-infected student should be lessened by the rules set forth in this subchapter. In addition, these rules may prevent litigation resulting from inappropriate removal of a student or employee. There should be no negative economic impact of the proposed new rules. Federal law already requires compliance with the Occupational Safety and Health Administration and the Public Employees Occupational Safety and Health requirements. The provision of N.J.A.C. 8:61-2.1 affects all schools and day care centers is the requirement that the school or day care center have policies concerning handling of blood and body fluids and the development of policies and procedures for post exposure management. Medical follow-up and evaluation of potential exposures may result in a cost for these professional services. This cost will vary, depending on the risk stratification of the exposure and the chemoprophylaxis required.

N.J.A.C. 8:61-3

Despite federal funding to the State for this program, there is no expected adverse economic impact on the State. An expected positive impact will result from individuals receiving HIV/AIDS medications that could restore their health to the extent that they may return to the workforce and be productive.

N.J.A.C. 8:61-4

The disclosure of information being proposed through N.J.A.C. 8:61-4.1 should be beneficial to women who are infected with HIV, because it would allow for better treatment and medical care. It should also be beneficial for children because it would allow for better treatment and medical care to prevent HIV transmission from mother to infant.

Misuse of any information regarding an individual's HIV or AIDS status could emotionally harm that individual and ultimately result in an adverse economic impact. An additional adverse economic impact could be experienced by a health care provider who was held responsible for the misuse of information regarding HIV infection or AIDS, as a result of legal action against the provider and the settlement of the lawsuit. The disclosure of information through this proposed new rule is intentionally limited to specific circumstances and to specific parties for the well being of women infected with HIV, to prevent transmission of HIV from mother to infant, and for the well being of the HIV infected infant/child. The Department continues to be keenly aware of the need for the strictest confidentiality of this information, and will continue to take the necessary steps to maintain that confidentiality and to minimize the possibility of inadvertent disclosure. The economic impact of Subchapter 4 on health care providers should not be burdensome, since this is the current standard of care and practice within the industry.

N.J.A.C. 8:61-5

There is no economic impact to Subchapter 5, other than further reducing the need for unnecessary or duplicative medical tests for children already known to be infected with HIV. The standards contained in this Subchapter are designed to promote the quality of care by assuring timely treatment and medical care of an infant or child.

Federal Standards Statement

There are Federal laws and regulations regarding occupational safety and health. N.J.A.C. 8:61-1 is consistent with the 29 C.F.R. Part 1910.1030. There are no standards, which exceed Federal standards.

The rule at Subchapter 3 do not impose standards on health care providers that exceed those contained in the "U.S. Public Health Service Recommendations for Human Immunodeficiency Virus, Counseling and Voluntary Testing of Pregnant Women" as set forth in the July 7, 1996 issue of the Morbidity and Mortality Weekly Report (1995. Volume 44. Recommendations and Reports No. RR-7).

The rules at Subchapters 2, 4 and 5 are not subject to Federal law or regulation and a Federal standards analysis is not required.

Jobs Impact

The Department does not expect that any jobs will either be generated or lost as a consequence of the proposed new rules.

Agriculture Industry Impact

The proposed new rules will not have any impact on the agriculture industry.

Regulatory Flexibility Analysis**N.J.A.C. 8:61-1 and 2**

Except as discussed below, the proposed new rules contained in Subchapters 1 and 2 apply only to the public school system, and thus have no effect on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Private schools and day care centers may be guided by these proposed new rules, but the rules do not have a direct regulatory impact on these agencies. The provision of N.J.A.C. 8:61-2.1 that affects all schools and day care centers is the requirement that the school or day care center have policies concerning handling of blood and body fluids and the development of policies and procedures for post-exposure management. The Department has determined that there should be no differentiation based on

business size in the rules, in the interest of public health. Medical follow-up and evaluation of potential exposures may result in a cost for these professional services. This cost will vary, depending on the risk stratification of the exposure and the chemoprophylaxis required.

N.J.A.C. 8:61-3

The proposed new rules apply only to individuals suffering from AIDS and HIV infection, as documented by a licensed physician, and will have no impact on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

N.J.A.C. 8:61-4

The proposed new rule affects physicians and other small health care providers, which are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, it is not appropriate or necessary to establish differential rules that apply to larger or smaller businesses. The requirement of mandatory counseling and voluntary testing, and the reporting of HIV/AIDS to the Department of Health and Senior Services, are consistent with the standard practice of care that should be provided to this patient population. The proposed new rules do not add any unnecessary burden for these providers.

N.J.A.C. 8:61-5

Subchapter 5 affects certain foster care and adoption agencies and some congregate care facilities which may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is not appropriate or necessary to establish differential rules that would apply to larger or smaller businesses. The proposed new rules do not place any unnecessary or overly stringent requirements on these agencies and facilities. The agencies and facilities are required to maintain the confidentiality of the information disclosed to them, except that, where appropriate, they are authorized to disclose the information to direct caregivers. Because confidentiality protections and disclosure provisions are designed to protect personal information about individuals being served, this interest does not vary with the size of businesses.

Smart Growth Impact

The proposed new rules shall have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rule follows:

CHAPTER 61 ACQUIRED IMMUNODEFICIENCY SYNDROME

SUBCHAPTER 1. DEFINITIONS

8:61-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise: “Adult” means a teacher, administrator, food service employee or other school staff member.

“AIDS” means acquired immunodeficiency syndrome, a disease that meets the criteria for the diagnosis specified by the Centers for Disease Control and Prevention of the United States Public Health Service, in the “1993 Revised Classifications System for HIV Infection and Expanded Surveillance Case Definition for AIDS Among Adolescents and Adults,” as published by the Centers for Disease Control and Prevention in the Morbidity and Mortality Weekly Report 1992, volume 41, No. RR-17, and in the Guidelines for National Human Immunodeficiency Virus Case Surveillance, Including Monitoring for Human Immunodeficiency Virus Infection and Acquired Immunodeficiency Syndrome as published by the Centers for Disease Control and Prevention in the Morbidity and Mortality Weekly Report 1999, volume 48, No. RR-13; 1-28 as appropriate, incorporated herein by reference, as amended and supplemented. That publication may be found at www.cdc.gov/mmwr.

“AIDS Drug Distribution Program” means the program by which eligible individuals will receive designated medications approved by the Federal Food and Drug Administration which have been recognized as either prolonging or enhancing the life of individuals with HIV infection from funds appropriated to the State from the Federal government.

“Department” means the New Jersey Department of Health and Senior Services.

“Full-time caregiver” means a foster parent (s), prospective adoptive parent (s), group home and treatment home parent(s), the medical director or other individual in other congregate care facilities responsible for the medical care and management of the child. This list is not exhaustive and may include relatives and family friends who are actively engaged in caring for the needs of the HIV/AIDS child.

“Need-to-know basis” means that a disclosure will occur only when necessary for the treatment, care, and overall health needs of the HIV/AIDS infected child.

“HIV” means human immunodeficiency virus, the causative agent of AIDS.

“Physician” means an individual currently licensed to practice medicine and surgery pursuant to N.J.S.A. 45:9-1 et seq.

“Student” means an individual entitled to enrollment in a public preschool, elementary, secondary or adult high school program, charter school, or a licensed school acting under contract to provide educational services on behalf of a public school district within the State of New Jersey and school programs operated by or under contract with the New Jersey Departments of Corrections and Human Services and the Juvenile Justice Commission.

SUBCHAPTER 2. PARTICIPATION AND ATTENDANCE AT SCHOOL BY INDIVIDUALS WITH HIV INFECTION

8:61-2.1 Attendance at school by students or adults infected by Human Immunodeficiency Virus (HIV), the causative agent of AIDS.

(a) No student with HIV infection shall be excluded from attending school for reason of the HIV infection. Exclusion of an HIV infected student can only be for reasons that would lead to the exclusion of any other student.

(b) No person with HIV infection shall be restricted from their normal employment for reason of the HIV infection, unless they have another illness, which would restrict that employment.

(c) No student shall be excluded from school services, including transportation, extra-curricular activities, and athletic activities, or assigned to separate services, such as home instruction, for reason of HIV infection or living with or being related to someone with HIV infection, as required by N.J.A.C. 6A:16-1.4.

(d) Any person shall be removed from the school setting if the person has uncovered weeping skin lesions.

(e) Any public or non-public school or day care facility, regardless of whether students or adults with HIV are present, shall adopt written policies and routine procedures for handling blood and body fluids and make available training and appropriate supplies to all school personnel, in conformance with N.J.A.C. 6A:16-1.3 and 2.3(e).

(f) Any public or non-public school and day care facility shall adopt written policies and procedures for post-exposure evaluation and follow-up for any employee exposed to blood or body fluids. District boards of education shall develop written policies and procedures for post exposure management, in conformance with the Occupational Safety and Health Administration (OSHA) Safety and Health Standards for Occupational Exposure to Bloodborne Pathogens, 29 C.F.R. 1910.1030, and the Public Employees Occupational Safety and Health Standards at N.J.A.C. 12:100-4.2.

(g) Any employee of a district board of education or public school shall share information that identifies a student as having HIV infection or AIDS only with prior written informed consent of the student age 12 or greater, or of the student's parent or guardian, as required by N.J.S.A. 26:5C-5 et seq.

SUBCHAPTER 3. ELIGIBILITY CRITERIA TO PARTICIPATE IN THE AIDS DRUG DISTRIBUTION PROGRAM

8:61-3.1 Purpose;

The purpose of this subchapter is to describe the clinical and financial criteria which individuals must meet, in order to become enrolled in the AIDS Drug Distribution Program.

8:61-3.2 Coverage

The medications designated for coverage shall be based on considerations of cost, efficacy and frequency of use as determined by the Division of HIV/AIDS Services.

8:61-3.3 Clinical eligibility

To be considered clinically eligible to participate in the AIDS Drug Distribution Program, an individual must meet the clinical criteria established by the manufacturer of the drug, as determined by a licensed physician.

8:61-3.4 Income eligibility

(a) In order to be eligible for this program, the individual(s) shall be a permanent resident of New Jersey and must have an annual income that does not exceed 500 percent of the Federal Poverty Level in accordance with the provisions of 42 U.S.C. § 9902(2) as amended and supplemented.

1. An applicant and spouse shall be considered separated when each maintains a separate residence and the applicant does not have access to or receive support from the spouse's income.

2. An applicant and spouse shall be considered separated when the spouse has been institutionalized in an assisted living facility, long-term care facility, either skilled intermediate, or in a state or county psychiatric hospital at least 30 consecutive days prior to application.

(b) Income shall be determined in accordance with the standards delineated at N.J.A.C. 8:83-6.2.

8:61-3.5 Residence

Residence shall be determined in accordance with the standards delineated at N.J.A.C. 8:83-6.4.

8:61-3.6 Third party coverage

Individuals who are eligible to receive the covered medications from entitlement programs or third party payers are not eligible to receive benefits under this program.

8:61-3.7 Application process

(a) Applications to enroll in the program can be obtained by calling toll free, at 1-877-613-4533.

(b) Once an interested individual receives the application, the form should be completed and returned to the address indicated on the application. The application requires personal information on residency, immigration status, race/ethnicity, marital status, household income, employment status, insurance coverage, certification by a pharmacist and physician.

(c) If approved for participation in the Program, the Department or its designee will notify the individual, his or her physician, and the pharmacy from which the prescription will be filled.

SUBCHAPTER 4. HIV COUNSELING AND TESTING OF PREGNANT WOMEN

8:61-4.1 HIV counseling and testing of pregnant women

(a) A physician, or other duly licensed health care provider, shall provide information on HIV and AIDS and offer testing for HIV infection to all pregnant women or a woman who seeks treatment within four weeks of being postpartum to whom he or she is providing care, unless it is known by the physician that the woman has already been given the required information and has been tested for HIV infection during her pregnancy or within four weeks of being postpartum. The physician may allow a registered professional nurse, a licensed health care professional, or a trained HIV counselor to provide such information, but such delegation of duties shall not relieve the physician from the ultimate responsibility to see that this information is provided.

(b) A physician shall ask that the woman sign a form, prepared by the Department, acknowledging that she has received the required information and indicated her preference regarding testing for HIV infection. Blank copies of this

form will be made available to physicians, who may reproduce as many copies as necessary for use in their practice.

(c) A physician may use a different form than the one provided by the Department, provided that the woman's signature is obtained and the physician's form contains, at a minimum, all of the information on the form prepared by the Department. Specifically, any substitute form shall contain a statement that the woman has received information concerning:

- I. How HIV is transmitted;
2. The benefits of voluntary testing for HIV infection and of knowing whether or not she is infected with HIV;
3. The treatments that are available to her and her child should the test be positive; and
4. The right to refuse the test and without fear of denial of appropriate prenatal care due to this refusal. The form shall also indicate whether or not the woman has decided to be tested for HIV infection.

(d) A physician shall make every reasonable effort to provide the woman with the results of the test for HIV infection, and the meaning of those results. Women who have a negative test result shall be advised about measures to prevent the HIV infection. Women who test positive or indeterminate shall be advised about:

1. Further testing;
2. Methods to prevent transmission of HIV;
3. Appropriate medical care for the woman;
4. Recommended treatment to reduce the risk of mother-to-infant transmission of HIV; and
5. Appropriate social and other necessary services.

(e) A physician who cannot follow through with counseling or further care of a woman with a positive or indeterminate test shall initiate a referral to another physician who will provide counseling and care for the woman.

(f) Information and test results about a woman which are obtained pursuant to this section shall be held confidential in accordance with N.J.S.A. 26:5C-5 et seq. For the purposes of disease prevention and control, the physician caring for the woman may make her test results known to the physician caring for her infant. The Department or its designee may contact an HIV positive woman or her infant's pediatrician to follow-up on the HIV status and HIV related care of the infant. The physician caring for the infant shall also keep this information confidential.

SUBCHAPTER 5. DISCLOSURE OF INFORMATION TO FULL-TIME CAREGIVERS

8:61-5.1 Disclosure of information to full-time caregivers

The contents of a child's HIV/AIDS record may be disclosed by health care providers to the Division of Youth and Family Services. The Division of Youth and Family Services may disclose such information on a need-to-know basis to private adoption agencies certified by the Division of Youth and Family Services and to foster care agencies with which the Division of Youth and Family Services contracts. The Division of Youth and Family Services, private adoption agencies certified by the Division of Youth and Family Services, and foster care agencies with which the Division of Youth and Family Services contracts may disclose the contents of a child's HIV/AIDS record on a need-to-know basis for the care and treatment of the child to any full-time caregiver. Individuals receiving such information shall keep the information confidential, pursuant to N.J.S.A. 26:5C-10.